

**REMARKS**

Claims 1-16 are pending in this application. Claims 1 and 10 have been amended and new independent claim 17 has been added.

While Applicant believes that the originally presented claims are patentable over all the art cited by the Examiner as well as all other references submitted by Applicant, the claims have nonetheless been amended as follows in order to expedite the application toward allowance. Support for the amendments can be found throughout the specification, figures, and in the claims as filed.

Specifically, support for the phrases “the distal end of the housing being sufficiently flexible to be bent into a loop configuration” and “fluid channel within the housing” as recited in amended claims 1 and 10 can be found at page 10, lines 13-15 and page 12, lines 5-10.

Independent claim 17 has been added and is believed to be in allowable condition. Support for claim 17 can be found at page 10, lines 1-15 and page 12, lines 5-10.

Accordingly, no new matter has been added by the proposed amendments or new claim.

Applicant respectfully traverses the Examiner’s rejections and requests reconsideration of the application in view of the amendments made above and the remarks that follow.

***Objections to the Specification***

The Specification has been objected to as not stating the proper continuation history. The Specification has been amended to reflect that U.S. Patent Application Serial No. 09/924,393 is now U.S. Patent No. 6,676,656. The Examiner asserted that Applicant should indicate that U.S. Patent No. 6,558,375 is a continuation-in-part of U.S. Patent Application Serial No. 09/382,615. However, U.S. Patent No. 6,558,375 is not a continuation-in-part of U.S. Patent Application Serial No. 09/382,615. U.S. Patent Application Serial No. 09/382,615 represents a separate line of continuation.

***Rejections under 35 U.S.C. § 102(e)***

Claims 1-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,522,930 to Schaer (hereinafter “Schaer”). Based on the amendments and the following remarks, Applicant respectfully requests reconsideration and withdrawal of the anticipatory rejection.

Independent claim 1, as amended, relates to a *surgical ablation instrument* having a housing, an ablation element, and a fluid channel. The housing includes a longitudinal lumen, and the *distal end* of the elongate housing is *sufficiently flexible* to be *bent* into a *loop configuration*. The ablation element is disposable within the lumen of the housing to ablate tissue at a target site. The fluid channel is within the housing for introducing fluid to the ablation element during delivery of the ablation energy.

Independent claim 10, as amended, relates to a *method* for ablating a target tissue including the steps of: providing a surgical ablation instrument having a housing with a proximal end, a distal end and a longitudinal lumen extending therebetween, the distal end of the elongate housing being *sufficiently flexible to be bent into a loop configuration*, an ablation element disposed within the lumen of the housing to ablate tissue at a target site, and a fluid channel within the housing for introducing fluid to the ablation element during delivery of the ablation energy; positioning the surgical ablation instrument proximate to a predetermined tissue site; and delivering ablative energy to the distal end of the housing through the ablation element, such that the target tissue is ablated, coagulated or phototherapeutically modulated without damaging surrounding tissue.

Schaer relates to a tissue ablation device which includes a porous membrane adapted to allow a volume of pressurized fluid to pass from the space within the porous membrane through the porous wall to an exterior of the ablation member. In Schaer, the porous membrane “has a generally tubular shape and extends along at least a portion of the ablation member’s length.” (Schaer column 15, lines 3-5). The tubular porous membrane “is sufficiently flexible in the longitudinal direction (i.e., deflectable) so as to track over and along a guidewire positioned within the left atrium.” (Schaer column 15, lines 23-25). Schaer does not teach, suggest or even

contemplate an ablation element that is designed to *encircle* a target region of tissue by bending into a loop configuration.

In contrast, amended claims 1 and 10 recite a housing having a distal end that is sufficiently *flexible to be bent into a loop configuration*. Schaer fails to disclose this feature. While Schaer teaches a membrane that is sufficiently flexible to track over and *along a guidewire*, it does not disclose a housing capable of being bent into a *loop configuration* as required by claims 1 and 10.

Accordingly, because Schaer does not disclose or suggest each and every element of Applicant's claims 1 and 10, claims 1 and 10 are not anticipated by Schaer. Independent claims 1 and 10 are therefore patentable over Schaer and should be allowed to issue. Claims 2-9, which depend directly or indirectly on claim 1, and claims 11-16, which depend directly or indirectly on claim 10, should also be allowed to issue as depending upon allowable base claims. Reconsideration of the rejection is respectfully requested.

***New Claim***

Independent claim 17 has been added and is believed to be in allowable condition. Claim 17 includes all the limitations of claim 10 and further includes the limitation of providing an *epicardial* ablation instrument. Support for claim 17 can be found at page 10, lines 1-15 and page 12, lines 5-10. No new matter has been added.

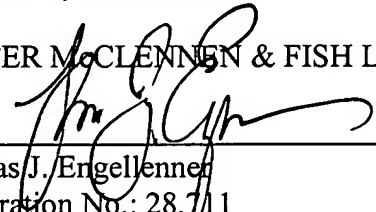
**CONCLUSION**

In summary, the above-identified patent application has been amended and reconsideration is respectfully requested for all the reasons set forth above. In the event that the amendments and remarks are not deemed to overcome the grounds for rejection, the Examiner is kindly requested to telephone the undersigned representative to discuss any remaining issues.

Respectfully submitted,

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